

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)
)
 Guidelines for Evaluating the)
 Environmental Effects of)
 Radiofrequency Radiation)

ET Docket 93-62

REPLY COMMENTS

AMSC Subsidiary Corporation ("AMSC") hereby proffers its Reply Comments in this proceeding. The Notice of Proposed Rule Making ("NPRM"), 8 FCC Rcd 2849 (1993), proposed to adopt ANSI/IEEE C95.1-1992 as the updated FCC standard for exposure to radio-frequency ("RF") radiation and for evaluating the RF-related environmental effects of FCC-regulated facilities. The NPRM also asked how the FCC should implement any new standard.

AMSC takes no position on the merits of the revised ANSI standard. However, AMSC urges the Commission to:

- not adopt any standard more stringent than C95.1-1992;
- phase in any new standard the FCC may adopt;
- categorically exclude from environmental processing applications for blanket licenses for Mobile Satellite Service ("MSS") mobile terminals;
- grandfather equipment covered by outstanding blanket licenses or equipment authorizations; and
- preempt state and local regulation of r.f. emitters, at least of MSS mobile terminals.

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Adoption of IEEE/ANSI C95.1-1992

The vast majority of the Comments¹ support C95.1-1992. Only a handful attack it. Of the few dissenters, two (Linear Corporation, American Radio Relay League or "ARRL") fault the ANSI mechanism for alleged lack of due process. Three parties, the ARRL Bioeffects Committee, the Industrial Hygiene Institute, and the Environmental Protection Agency allege that C95.1-1992 does not take into account RF fields' "athermal" effects (those other than heat-related) on living cells.

As noted above, AMSC has taken no position on C95.1-1992. AMSC sees, however, no grounds for a more stringent standard. Three key facts buttress AMSC's conclusion. First, C95.1-1992 is based on the most recent scientific data. Second, it is a "very conservative" standard. C95.1-1992 at 21. Third, ANSI weighed the athermal issue and found a lack of scientific support for the claimed effects. The committee members found that claimed experimental athermal results had not been replicated, and hence provided no basis for even stricter exposure limits.

Additional restrictions on the use of RF would serve no demonstrably useful end. By contrast, the public would suffer the loss of many significant benefits that radio communications provide (e.g., assistance to firefighters, law-enforcement and

¹ For example, those of the Department of Defense, the Arizona Department of Public Safety, Jules Cohen & Associates, the National Association of Broadcasters, the Cellular Telecommunications Industry Association, the Telecommunications Industry Association ("TIA"), and the American Telephone and Telegraph Company.

emergency-medical teams, to lost or stranded motorists, and the on-the-scene broadcast coverage of toxic-chemical spills and natural disasters). On that basis and on the record in this proceeding, the FCC may not adopt a standard more stringent than C95.1-1992. Finally, as regards due process, this rule making has served to provide full and adequate notice and opportunity for comment.

Controlled vs. Uncontrolled Environment

AMSC agrees with the Department of Defense, CBS, Capital Cities/ABC, Greater Media, Tribune Company, Westinghouse, Telocator, etc., that if the FCC adopts C95.1-1992, it should not blur ANSI's own distinction between the controlled and uncontrolled environments. The NPRM deems any public exposure without the public's awareness (e.g., as a general rule, use of hand-held devices) as occurring in the uncontrolled environment. That, however, is unnecessarily restrictive.

The ANSI standard explicitly recognizes the potential for transient public exposure in controlled environments. C95.1-1992 also recognizes that one can use hand-held devices in controlled environments. Moreover, as Jules Cohen and Associates and Raytheon correctly point out, the ANSI standard recognizes a "low-power exclusion" for controlled environments, and that such exclusion is not limited to uncontrolled environments only. With specific regard to MSS equipment, AMSC supports TRW's suggestion that the FCC deem the use of MSS mobile terminals to occur in the

controlled environment, based on the sophistication of the expected users.

Categorically Exclude MSS Mobile Terminals

Regardless of which standard (if any) the Commission may choose to supplant C95.1-1982, under NEPA and its implementing regulations, the FCC should categorically exclude applications for blanket licenses for MSS mobile terminals from environmental processing. The vast majority of Comments addressing mobile-communications issues (e.g., by the United States Telephone Association, Telocator, TIA, Pactel, etc.) support the conclusion that low-power mobile transmitters such as AMSC's mobile terminals pose no reasonable risk of even transient exposures above the limit for the uncontrolled environment. Accordingly, categorical exclusion of MSS mobile terminals is both appropriate and consistent with federal environmental laws and the public health and welfare.

Phase In Any New Standard

AMSC reiterates its request that the FCC phase in any new standard. A gradual approach is necessary to avoid needless disruption of AMSC's efforts to bring MSS to the American people. Most other Commenters (e.g., TIA, Ericsson, CBS et al., the National Association of Broadcasters, National Public Radio, Jules Cohen and Associates, and the Arizona Department of Public Safety) also support a gradual approach. The clear sense of

these Comments reinforces AMSC's conviction that a transitional period is necessary. That transition should commence upon FCC approval of specific measurement techniques or mathematical models for demonstrating compliance with the new standard, and should end no sooner than two years after such techniques or prediction algorithms have been widely available. That will give operators of equipment test facilities sufficient time to acquire instrumentation and to develop expertise in evaluating compliance with C95.1-1992, particularly the SAR limits.

The great majority of the Comments also clearly supports AMSC's positions that the FCC should not reopen outstanding facilities licenses prior to normal renewal cycles or grants of equipment authorization. As was the case with C95.1-1982, the FCC should examine compliance with any new RF standard at license-renewal time.

Future Revisions to C95.1-1992 Require Public Comment

Should the FCC adopt C95.1-1992, AMSC urges the Commission not to follow the request of the Institute of Electrical and Electronic Engineers' Standards Committee 28, its Committee on Man and Radiation, and of Jules Cohen and Associates, to adopt -- without rule making -- subsequent revisions and clarifications of C95.1-1992 that ANSI may adopt. The Administrative Procedure Act requires adequate public notice and opportunity for comment before adoption of substantive rules of general applicability.

Preempt State and Local Standards

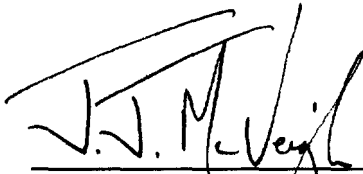
Many Commenters have, like AMSC, urged the FCC to preempt state and local efforts to regulate RF exposure. Their filings recount numerous efforts by state and local bodies to heavily regulate the use of RF energy, FCC licenses notwithstanding. Clearly, use of RF energy has intrastate and interstate aspects. The Commenters' examples also make it abundantly clear that FCC preemption is necessary to protect valid federal regulatory objectives -- efficient use of the spectrum and provision of telecommunications services to the entire nation. And state regulation of the use of RF energy would negate the FCC's exercise of its own powers under the Communications Act, because regulation of the interstate aspects of the use of RF energy is inextricably intertwined with regulation of the intrastate aspects. Accordingly, federal preemption is appropriate, either in this proceeding or in a further rule making. Public Service Commission of Maryland v. FCC, 909 F.2d 1510 (D.C. Cir. 1990).

Conclusion

For the reasons set forth above, AMSC urges the Commission to adopt a Report and Order consistent with these Reply Comments and with AMSC's earlier-filed Comments.

Respectfully submitted,

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